

UNITED STATES DISTRICT COURT

BILLINGS DIVISION, DISTRICT OF MONTANA

FILED  
BILLINGS DIV.

2007 JUL 26 PM 1 22

PATRICK E. DUFFY, CLERK

UNITED STATES OF AMERICA

CRIMINAL COMPLAINT

V.

BY DEPUTY CLERK

BASIL PETER HERBST,

CASE NUMBER: MJ-07-49-BLG-CSO

I, the undersigned complainant, being duly sworn, state the following is true and correct to the best of my knowledge and belief :

COUNT I

That in approximately 2005 at Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, used, persuaded, induced, enticed or coerced a minor (name withheld to protect victim's privacy, d/o/b --/94), to engage in, or had a minor assist any other person to engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or if that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(a). (Penalty: Mandatory minimum fifteen to thirty years imprisonment, \$250,000 fine, and lifetime supervised release )

COUNT II

That in approximately 2005, at Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, as a parent, legal guardian, or person having custody or control of a minor, (name withheld to protect victim's privacy, d/o/b --/94), knowingly permitted such minor to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce, or mailed, or if that visual depiction was produced using material that had been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed, in violation of 18 U.S.C. § 2251(b). (Penalty: Mandatory minimum fifteen to thirty years imprisonment, \$250,000 fine, and lifetime supervised release )

COUNT III

That from approximately 2005 and continuing thereafter until on or about July 15, 2007 at Billings, in the State and District of Montana, the defendant, BASIL PETER HERBST, knowingly possessed computer files containing an image or images of child pornography that had been mailed, or shipped, or transported in interstate or foreign commerce or that were produced using material that had been mailed, shipped or transported in interstate or foreign commerce by any means including by a computer located at 1124 Avenue E, Billings, Montana, in violation of 18 U.S.C. § 2252A(a)(5)(B). (Penalty: Ten years imprisonment, \$250,000 fine, and lifetime supervised release)

I further state that I am a Special Agent with the Federal Bureau of Investigation and that this complaint is based on the following facts:

See attached affidavit, incorporated herein by reference

(x) Continued on the attached sheet and made a part hereof

July 28, 2007  
Date

Carolyn S. Ostby  
United States Magistrate

Daniel T. Vierthaler  
Daniel T. Vierthaler  
Special Agent, FBI

Billings, Montana

Signature of Judicial Officer

THE UNITED STATES DISTRICT COURT FOR THE

DISTRICT OF MONTANA

AFFIDAVIT IN SUPPORT OF A CRIMINAL COMPLAINT

Your affiant, Daniel T. Vierthaler, a Special Agent (SA) for the Federal Bureau of Investigation (FBI), assigned to the Resident Agent in Charge, Billings, Montana, being duly sworn, deposes and states as follows:

1. I am a Special Agent with the Federal Bureau of Investigation (FBI), presently assigned to the Resident Agent in Charge, Billings, Montana, and have been so employed since 1989. I have been involved in investigations involving the sexual exploitation of children. I have also spoken with and have been advised by other agents regarding child pornography investigations and their investigative techniques.

2. As a federal agent, I am authorized to investigate violations of the laws of the United States and am a law enforcement officer with the authority to execute warrants issued under the authority of the United States.

3. This affidavit is submitted in support of a Criminal Complaint charging Basil Peter Herbst with Sexual Exploitation of Children and Possession of Child Pornography from 2005 through July 25, 2007, in violation of 18 U.S.C. §§ 2251 and 2252A(a)(5)(B).

4. The investigation began on July 9, 2007 when a foster family reported concerns about defendant Basil Peter Herbst and their adult mildly retarded foster daughter. In that related investigation, on July 24, 2007, Herbst gave consent for Billings Police Department Officers to review his laptop computer for images of child pornography and reported that he owned a Kodak digital camera and a digital video camera.

5. On July 25, 2007, with the assistance of Detective Woog and FBI forensic computer examiner Special Agent (SA) Matt Salacinski, affiant and Detective Dukart utilized Image Scan software to view images stored on the hard drive of Herbst's laptop computer.

While reviewing graphic images stored on the computer hard drive, Detective Dukart discovered 40 images of a young juvenile female. The photographs depicted nudity, to include the lascivious depiction of the girl's genitalia. Several photographs also depicted the girl performing fellatio on a white adult male who had brown pubic hair. At least three additional photographs depicted vaginal intercourse between the girl and a white adult male who had brown pubic hair. Although the adult male's face was not depicted, he was clearly wearing a silver thumb ring and a tattoo appeared on his abdomen above the genitals. Herbst is a white adult male with brown hair.

6. Images taken with devices such as digital cameras contain Exchangeable Information Format (EXIF) data which is embedded within the digital file. EXIF data is comprised of information regarding the digital file's origin and creation. For example, the EXIF data for a photograph taken with a digital camera contains the make and model of the camera used to take the image, exposure settings, date and time the image was created, etcetera.

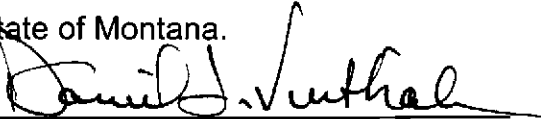
7. Following Detective Dukart's discovery of the pornographic images of the young girl, SA Salacinski reviewed the EXIF data for the images and determined they were produced by a Kodak digital camera. Herbst had already told Officer Carson that he owned a Kodak digital camera. The images bear a date in 2005.

8. During the afternoon of July 25, 2007 Billings Department Officer Carson was shown the pornographic images of the young girl found on Herbst's laptop computer. Carson immediately recognized the young girl as Herbst's daughter, B., d/o/b --/--/94. Officer Carson also reported that Herbst has many tattoos and when Officer Carson interviewed Herbst on July 24, 2007, he was wearing a silver thumb ring on his left hand.

9. The foster parent who originally made the report also identified the young girl in the images as Herbst's daughter, B. The foster parent also identified the curtains and couch depicted in the photograph as the same curtains and couch located in Herbst's home at 1124

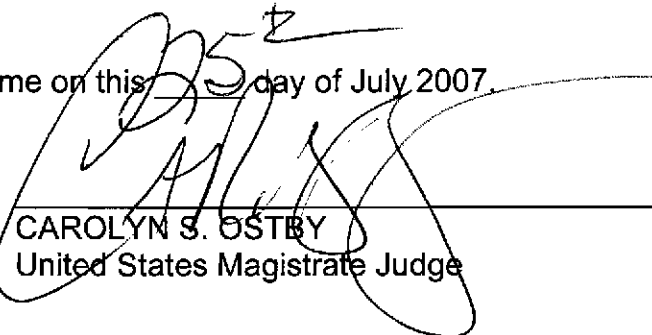
Avenue E, Billings, Montana, and added that a love seat which matched the couch depicted in the photograph was also located in Herbst's Billings home. Other photographs which depicted the young girl, but which were not shown to the foster parent, depicted a love seat identical to the couch. The foster parent described several tattoos on Herbst's person, to include tattoos on his lower abdomen and reported that he wore a silver thumb ring. Hulit reported the ring was unique because it "spun in the middle".

10. The images found on Herbst's computer depicting him and the minor female child are sexually explicit images that Herbst produced using materials that were mailed or shipped or transported in interstate or foreign commerce, as the computer and Kodak camera were both manufactured outside the state of Montana.



DANIEL T. VIERTHALER  
Special Agent  
Federal Bureau of Investigation  
Billings, Montana

Subscribed and sworn to before me on this 25<sup>th</sup> day of July 2007.



CAROLYN S. OSTBY  
United States Magistrate Judge